IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BHARGAYKUMAR C VADIYA - Appellant

Versus

STATE OF GUJARAT & 2 others – Respondents

==========

Appearance :

MR KG PANDIT for Appellant

MR KC SHAH ADDL PP for Respondent No(s).: 1.
NOTICE SERVED for Respondent No(s).: 2,3.

==========

CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 12/08/2005

ORAL JUDGMENT

1. The Khambhat Nagarpalika through its Food Inspector has preferred the present appeal under Section 378 of the Code of Criminal Procedure, 1973 challenging the order of acquittal dated 3.8.2001 passed in Criminal Case No. 998 of 1991 acquitting the accused present respondent of the charges levelled against him under the provisions of the Provisions of the Prevention of Food Adulteration Act, 1954 (herein after referred to as 'the Act' for short). This court (Coram : R.P. Dholakia, J.) vide order dated 24.12.2002 granted leave and admitted the appeal. Shri Pandit, learned advocate for the appellant has submitted that a short issue is involved in this appeal and appeal can well be disposed of in absence of availability of the Record and Proceedings, only on the basis of the judgment and record available in this appeal.

2. The case of the appellant in short is that, the complainant Food Inspector accompanied with one of the staff member namely Jagdish Parmanand Shah, went to the place where, Samsuddin Jamalbhai was selling various syrup in a hand lari, popularly known as “lari” in a vernacular language on 2.6.1990 at 4-30 hrs. He purchased 600 grams of rose syrup, popularly known as “rose sarbat” in vernacular language and issued a

notice under Rule 12 of the Prevention of Food Adulteration Rules, 1955 (herein after referred to as 'the Rules' for short) in Form No. 6 indicating his intention to send the samples for analysis. He paid Rs.4.50ps for purchasing sample food article to the accused. He divided the said food article into thee equal parts and collected it into three cleaned, dried, orderless, dehumidified glass bottles. The bottles were properly sealed so as to prevent moisture or other substance from entering it. After applying the requisite seal, mark and details, they were wrapped and one portion of the sample was sent to Public Analyst for analysis and remaining two portion were sent to the Local Health Authority as required under law. On report received from the Public Analyst indicating that the sample food article was adulterated, necessary sanction for instituting prosecution was obtained from the competent authority and the complaint came to be lodged. The notice under Section 13 (2) of the Act came to be issued to the accused affording an opportunity to have the remaining sample tested by the Central Food Laboratory. It is emerging from the record that accused availed this opportunity and report was also received from Central Food Laboratory on 6.8.1992.

The learned Magistrate after examining the matter, call upon the accused for recording plea and put the charges and recorded his plea of denial. It appears that original complainant could not attend the hearing on number of occasions on fixed date, therefore, trial Court has decided not to wait for the complainant and proceeded with the matter. The trial Court framed two issues mainly (i) Whether the complainant has proved beyond doubt that the accused had kept in his possession the adulterated food and same was sold to the appellant? (ii) What order. The learned Magistrate has answered issue No. 1 in negative and second as per order. The learned trial Court has after detailed discussion on material on record, come to the conclusion that the prosecution has not proved its case and therefore, the order of acquittal dated 3.8.2001 came to be passed. The said order is challenged in the present appeal.

3. Shri Pandit, learned advocate for the appellant strenuously attempted to persuaded this court for reversing the order of trail Court and urged that the matter may be remanded to the trial court so that the respective parties may get sufficient opportunity to plead their respective cases. Shri Pandit has submitted

that the trial Court ought not to have ignored the report of the Central Food Laboratory and acquitted the accused of the charges on account of absence of complainant and his non-availability for cross-examination. Shri Pandit has submitted that the trial Court ought to have afforded reasonable opportunity to the prosecution and ought not to have passed the order of acquittal on the grounds, which are not emerging in the matter.

4. Shri Shah, learned Addl.P.P. for the respondent State submitted that the learned trial Judge has given reasons for acquittal and as those reasons are not tenable in eye of law, the order impugned deserves to be quashed and set aside and the matter be remanded for fresh trial.

5. This Court has gone through the material available on the record of the appeal and reasoning of the trial Court for passing the impugned order of acquittal. The following undisputed facts emerging from the judgment, deserve to be set out :

(a) The sample Food Article was collected from the accused admittedly on 2.6.1990.

(b) The accused appears to be a small time vendor engaged in the business of selling Sarbat.

(c.) The complainant was accompanied by panch witness

namely Jagdish Parmanand Shah

(d) The panch witness has not been examined.

(e) The Food Inspector original complainant was examined and his deposition is recorded at Ex.66.

(f) Ex.67 was the extract of Gazette appointing the complainant as a Food Inspector

(g) Ex.68 is the office copy of Form No. 6.

(h) Ex.69 and 70 are the receipts of payment.

(i) Ex.71 is the receipt of sending the sample to Local Health Authority

(j) Ex.72 and 73 are the impressions of seal

(k) Ex.74 is the receipt of Regd. A.D.

(l) Ex.75 is the receipt of receiving the sample by Public Analyst.

(m) Ex.76 and 77 are the memorandum and impression of seal.

(n) On 7.12.2000, the examination in chief had started and 22.1.2001 was the day on which, cross examination has commenced. Thereafter, an application of accused Ex.91 for further cross-examination was granted. Thereafter on 29.6.2001, the complainant had remained absent. On 2.7.2001, 9.7.2001, 12.7.2001, 18.9.2001, 20.7.2001, 21.7.2001 and on 23.7.2001 the complainant remained absent. The complainant gave application Ex.93 dated 20.6.2001 requesting that as the complainant was

out of station, he could not remain present. The trial Court had granted an application on condition that the complainant shall remain present on the next date. An application Ex.97 was made on 2.7.2001 on behalf of the complainant showing that he could not remain present, which was not granted by the Court. The complainant could not remain present thereafter on 9.7.2001, 12.7.2001 and 18.7.2001 and ultimately, the court was constrained to close the evidence of the prosecution on 12.7.2001. The Court has noted that on 18.7.2001, 20.7.2001, 21.7.2001, the complainant did not remain present or make himself available for cross-examination nor any application for further exemption or production of witness has been made on behalf of the complainant. The Court, thereafter, recorded further statement of the accused on 28.7.2001, wherein, it has been noticed that accused have denied the facts stated in the complaint and no procedure was followed.

(o) It is recorded by the trial Court that the prosecution has not led positive evidence of due compliance with Rule 14 of the Rules. The peon has not been examined in this matter.

(p) The trial Court has noted that whatever details gathered from the cross-examination of the complainant at the initial stage, it has come out unequivocally

that the complainant himself was a member of Khambhat Central Consumer Cooperative Store, which deals in edibles and food articles.

(q) The provision of Section 9 of the Act, specifically debars the person, who has any financial interest in the manufacture, import or sale of any article of food shall be appointed to be a food inspector under this section.

(r.) The trial Court has observed that there was non compliance with provisions of Evidence Act.

(s) The complainant has not made himself available for cross-examination, denying the precious right of cross-examination to the accused.

(t) The reason for non availability of the complainant and failure on the part of the prosecution to offer him for cross examination would go to show that the prosecution case was not established beyond doubt.

6. In view of aforesaid unequivocal evidence, which have emerged, this court is unable to accept the request of Shri Pandit for remanding the matter after quashing and setting aside the order of acquittal. The facts, which came out on record, cannot be ignored that the Food Inspector himself has admitted, as it is recorded by the trial Court, that he was member of the Khambhat Central Consumer Cooperative Store, which deal in

edible and food articles and as such he was not qualified to be appointed as Food Inspector, this fact has weighed with the trial Court in recording acquittal. It is further important to note that the non availability of the Food Inspector during trial, has resulted into great prejudice to the accused and this infirmity remained incurable. Looking to the passage of time and over all facts and circumstances of the case, the prayer of Shri Pandit does not seems to be acceptable.

7. This court sitting in an acquittal appeal is mindful that the acquittal orders are not required to be interfered with unless and until serious perversity is pointed out resulting into miscarriage of justice. In the instant case, in absence of such perversity coupled with the facts discussed herein above, would go to show that the order of acquittal impugned in this appeal, does not call for any interference.

8. In the result, the impugned order of acquittal does not call for any interference in this appeal, the appeal deserves to be dismissed and is dismissed accordingly.

(S.R.BRAHMBHATT, J.)

pallav